

Amendment No. 1 to SB0326

Bell
Signature of Sponsor

AMEND Senate Bill No. 326*

House Bill No. 674

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-6-303, is amended by deleting the section and substituting instead the following:

(a) In extraordinary cases, the court is authorized to order stepparent visitation under the following circumstances:

(1) If a stepparent or former stepparent presents a petition, or a motion in a pending case to which the stepparent is a party, for visitation with the stepparent's stepchild or former stepchild to the circuit court, chancery court, general sessions court with domestic relations jurisdiction, or juvenile court of the county in which the stepchild or former stepchild resides, the court shall set the matter for hearing if such visitation is opposed by a parent or custodian or if the petitioner's visitation has been severely reduced by the parent or custodian and any of the following circumstances exist:

(A) The parent of the child to whom the petitioner was married is deceased;

(B) The child's parent and the petitioner are divorced or are in the process of seeking a divorce;

(C) The whereabouts of the child's parent to whom the petitioner is married are unknown;

(D) The court of another state has ordered the visitation between the child and the petitioner;

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(E) The child and petitioner maintained a significant relationship for a substantial period of time preceding severance or severe reduction of contact and the contact was severed or severely reduced by the parent or custodian for reasons other than abuse or presence of danger of substantial mental, emotional, or physical harm to the child, and severance or severe reduction of this contact is likely to cause substantial mental, emotional, or physical harm to the child; or

(F) There has been an unreasonable denial of visitation by a parent or custodian and the denial has caused the child severe mental, emotional, or physical harm.

(2) For purposes of this section, "petitioner" includes a movant, unless the context otherwise requires.

(b)

(1) In considering a petition or motion for stepparent visitation, the court shall first determine the presence of a danger of substantial mental, emotional, or physical harm to the child if the requested visitation is not permitted by the court. Such finding of substantial harm may be based upon cessation or severe reduction of the contact between a minor child and the petitioner only if the court determines by a preponderance of the evidence that the child had a significant existing relationship with the petitioner, and that loss of or severe reduction in contact is likely to occasion severe mental, emotional, or physical harm to the child or presents the danger of other direct and substantial harm to the child.

(2) A petitioner is not required to present the testimony of an expert witness in order to establish a significant existing relationship with a child or that the loss or severe reduction of the contact is likely to cause substantial mental, emotional, or physical harm to the child.

(c) There is a rebuttable presumption that a fit parent's or custodian's actions and decisions regarding the petitioner's requested visitation are not harmful to the child's mental, emotional, or physical health. The burden is on the petitioner to prove that a parent's or custodian's actions and decisions regarding visitation will cause substantial harm to the child's mental, emotional, or physical health.

(d) Upon an initial finding of the presence of a danger of substantial mental, emotional, or physical harm to the child, the court shall then determine whether the petitioner's visitation would be in the best interest of the child based upon the factors in subsection (e). The best interest finding will only occur in extraordinary cases. Upon a determination that visitation would be in the best interest of the child, reasonable visitation may be ordered.

(e) In determining the best interests of the child under this section, the court shall consider all pertinent matters, including, but not limited to, the following:

- (1) The length and quality of the prior relationship between the child and the petitioner and the role performed by the petitioner;
- (2) The existing emotional ties of the child to the petitioner;
- (3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;
- (4) The effect of hostility between the petitioner and the parent or custodian of the child manifested before the child, and the willingness of the petitioner, except in case of abuse, to encourage a close relationship between the child and the parent or custodian of the child;
- (5) The good faith of the petitioner in filing the petition or motion;

(6) If one (1) parent or custodian is deceased or missing, the fact that the petitioner requesting visitation is or was the spouse of the deceased or missing parent or custodian;

(7) Any unreasonable deprivation of the petitioner's opportunity to visit with the child by the child's parent or custodian;

(8) Whether the petitioner is seeking to maintain a significant existing relationship with the child;

(9) Whether awarding the petitioner visitation would interfere with the parent-child relationship or the custodian-child relationship;

(10) The child's interactions and interrelationships with siblings, half-siblings, other relatives, and step-relatives;

(11) Any court finding that the child's parent or custodian is unfit; and

(12) Any other factors the court deems relevant.

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it, and shall apply to petitions and motions filed on or after that date.